IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) Nos.1595 and 1596 of 2004

Sivakami .. Petitioner, both C.R.Ps. / Plaintiff.

vs.

Shanmugasundaram .. Respondent, both C.R.Ps. / Defendant.

Revision Petitions filed against the order dated 28.5.2004, passed in I.A.Nos.77 and 78 of 2004 in O.S.No.9/2000, on the file of the Family Court Judge, Coimbatore.

For Petitioner : M/s.C.R.Prasanan
For Respondent : Mr.P.M.Duraiswamy

COMMON ORDER:

These revision petitions have been filed against the fair and decretal order dated 28.5.2004 passed by the Family Court Judge, Coimbatore.

2. The plaintiff before the Family Court, Coimbatore is the revision petitioner herein. The plaintiff filed O.S.No.9/2000 before the Family Court, Coimabotre against the respondent for maintenance and for a charge to be created on the suit property.

3. According to the revision petitioner/plaintiff, the respondent/husband was owning agricultural lands and he would get not less than Rs.1,00,000/- per year. Besides this he has sold part of the lands and got substantial sum of Rs.6,00,000/- and the same is in bank deposit. Therefore she sought for maintenance of Rs.1,000/- per month from her husband to sustain her living.

4. The said suit was resisted by the respondent/defendant by refuting all the allegations made by the revision petitioner/plaintiff. He also denied owning any lands. While so, it is stated by the revision petitioner/plaintiff that the respondent on 6.4.2004 was examined by filing proof affidavit. On 22.4.2004, the matter was posted for cross-examination. At the plaintiff's request it was adjourned to 28.4.2004. On 28.4.2004 when she sought for time to cross-examine the witness, the

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Family Court made an endorsement that there was no cross-examination on the plaintiff's side and posted the matter to 6.5.2004 for arguments. On 6.5.2004, the matter was again adjourned to 18.5.2004. On 18.5.2004 the plaintiff filed two Applications, one in I.A.No.77 of 2004 for reopening the side of the respondent and another in I.A.No.78 of 2004 to recall D.W.1 for further cross-examination of the respondent. But both these Applications were dismissed by the Family Court. Aggrieved against the dismissal of the two Applications, the plaintiff wife has filed the above Revision Petitions.

5. A perusal of the order dated 28.5.2004 would make it clear that no opportunity for cross-examination has been given by the Family Court. In a proceeding of this nature, the court should be a little lenient and accommodative in allowing the parties to cross-examine so that an effective adjudication could be made for resolving the dispute.

6. The only ground on which the Applications were dismissed is that the petitioner herein has filed a false affidavit as if she could not attend the court on 28.4.2004 as she had to attend a condolence meeting on that day, when she was very much present in the court on that day as evidenced by the endorsement made in the case diary of the Family Court.

7. Though it seems that there is some contradiction in the affidavit filed before the Family Court and the affidavit filed before this court regarding the presence of the petitioner/wife in the Family Court on 28.4.2004, considering the plight of the wife in her attempt to get maintenance from her husband for eking a livelihood, I feel that a further opportunity is to be extended to the petitioner/wife to cross-examine the respondent herein to adjudicate the matter on merits. Family Court is not the ordinary civil court where law is applied strictly and vigorously. Some sympathetic consideration could be extended always to a woman when she comes and knock the door seeking maintenance to save her from starving. Therefore I am inclined to set aside both the orders dated 28.5.2004 passed by the Family Court, Coimbatore in I.A.Nos.77 and 78 of 2004 and direct the Family Court to reopen the evidence of the respondent herein and to recall R.W.1 for cross-examination. It is made clear that on the day when the Family Court post the matter for cross-examination of R.W.1, the petitioner/plaintiff should do so without seeking any adjournment. Though normally some cost would have been imposed on such lapses, I refrain from doing so considering the fact that the suit is filed by the wife for maintenance from the husband.

8. In the result, both the Civil Revision Petitions are allowed. No costs. C.M.P.No.14715/2004 is closed.

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9. However, since the suit is of the year 2000, the Family Court is directed to dispose of the suit on priority basis, preferably within a period of six weeks from the date of receipt of copy of this order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

To
The Family Court Judge, Family Court, Coimbatore.
+ 1 CC To M/s.Hema Sampath, Advocate SR NO.29670
+ 1 CC To Mr. P.M.Doraiswamy, Advocate SR NO.29585

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10.7.2006

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